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August 4, 2000

Ex Parte Submission

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte*, CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Salas:

This letter provides further information regarding the obligation of incumbent LECs ("ILECs") to provide nondiscriminatory access to the unbundled network element platform ("UNE-P") for use by CLECs in providing both voice and data services over a single loop. Commission action is necessary to prevent ILECs from extending their monopoly over traditional POTS services to new advanced services in a manner that ensures that only the ILECs and their data affiliates will be able to realize the full benefits of new technology.

I. Line Splitting Using ILEC-Supplied Splitters

AT&T's petitions for reconsideration and clarification of the Commission's UNE Remand Order[1] and Line Sharing Order[2] seek, among other things, Commission action requiring ILECs to cooperate fully in enabling UNE-P CLECs to provide voice and data services over a single loop as swiftly, seamlessly, reliably, and economically as when an

[1] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

[2] Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order, 14 FCC Rcd 20912 (1999) ("Line Sharing Order").

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ILEC and its affiliate provide voice and data services, or when an ILEC provides voice services and a data-only CLEC provides advanced services. To this end, ILECs must provide splitters on a line-at-a-time basis to enable UNE-P carriers to offer both voice and data services over a customer's existing local loop. Although this service configuration is, in practical and technical terms, nearly identical to the "line sharing" described in the Line Sharing Order, it has come to be called "line splitting," in light of the fact that the CLEC purchases and uses the entire loop to provide both voice and data services.

In its Texas 271 Order, the Commission stated that its prior orders did not explicitly require ILECs to provide the support for line splitting that AT&T has requested.[3] The Commission found, however, that AT&T's arguments on this important issue "merit prompt and thorough consideration," and the Commission "commit[ted] to resolving them expeditiously" in the pending reconsideration of the UNE Remand Order.[4] In order to expedite the Commission's consideration of those issues, AT&T submits herewith the following materials from CC Docket Nos. 00-04 and 00-65, which provide technical, legal, and policy support for AT&T's position that ILECs must provide UNE-P CLECs with the reasonable and nondiscriminatory functionalities and processes they need, including splitters provided on a line-at-a-time basis, in order to comply with the Act and afford CLECs a meaningful opportunity to compete:

Application by SBC Communications Inc. *et al.*, for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-65:

- Attachment 1 - Ex Parte Letter from James L. Casserly, Counsel for AT&T Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission dated June 7, 2000 (legal argument at 1-12; policy considerations and need for expedited treatment at 12-14);

- Attachment 2 - Supplemental Responsive Declaration of C. Michael Pfau and Julie S. Chambers on Behalf of AT&T, dated June 7, 2000 (factual predicate for legal argument at 1-16; policy considerations and need for expedited treatment at 16-20);

- Attachment 3 - Supplemental Comments of AT&T in Opposition to SBC's Section 271 Application for Texas, dated April 26, 2000 at 10-19 (legal argument at 13-19; policy considerations and need for expedited treatment at 10-12); and

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[3] Application by SBC Communications Inc., *et al.*, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("Texas 271 Order") ¶ 328.

[4] Id.

- Attachment 4 - Supplemental Declaration of C. Michael Pfau and Julie S. Chambers on Behalf of AT&T, dated April 26, 2000 at 1-24 (factual predicate for legal argument at 8-22; policy considerations and need for expedited treatment at 22-24).

Application by SBC Communications Inc. *et al.*, for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-04:

- Attachment 5 - Ex Parte Letter from James L. Casserly, Counsel for AT&T to Magalie Roman Salas, Secretary, Federal Communications Commission, dated March 3, 2000 (public version) (legal argument at 1-3);

- Attachment 6 - Comments of AT&T in Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas, dated January 31, 2000 (public version) at 1-5, 9-22 (factual predicate for legal argument at 9-16; legal argument at 18-22; policy considerations and need for expedited treatment at 16-18); and

- Attachment 7 - Declaration of C. Michael Pfau and Julie S. Chambers on Behalf of AT&T, dated January 31, 2000 at 1-23 (factual predicate for legal argument at 4-5, 8-9, 13-23; policy considerations and need for expedited treatment at 5-13).

The above documents provide the Commission with ample authority, both in law and policy, to adopt AT&T's position. A CLEC has a right to the full and exclusive use of the loop it purchases from the ILEC (47 C.F.R. § 51.309(c)), and is entitled to OSS functions,[5] loop conditioning,[6] and cross-connects[7] to assure that it continues to receive nondiscriminatory access to UNEs and interconnection, as required by Section 251(c). Accordingly, AT&T requests that the Commission clarify that ILECs are required to provide splitters to UNE-P CLECs (and other requesting CLECs) on a shared use, line-at-a-time basis and to implement all procedures needed to provide UNE-P CLECs wishing to offer voice and data services over a single loop with a meaningful opportunity to compete against the service packages provided by the ILECs and their affiliates.

II. Line Splitting Using CLEC-Supplied Splitters

In the event that the Commission does not agree with AT&T's view that the Act and the Commission's procompetitive policies require ILECs to provide splitters, AT&T respectfully urges that the Commission clarify the ILECs' obligations when CLECs furnish splitters for use in line splitting. Specifically, the Texas 271 Order reaffirmed that

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5 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order (1996) ("Local Competition Order"), 11 FCC Rcd 15499, 15765-766, ¶ 520; UNE Remand Order ¶¶ 425-426.

6 UNE Remand Order ¶¶ 172-173.

7 Id. ¶¶ 178-179.

the Commission's existing rules "require incumbent LECs to provide requesting carriers with access to loops in a manner that allows the requesting carrier 'to provide any telecommunications service that can be offered by means of that network element.'"[8] At a minimum, therefore, "incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter."[9] Moreover, the order stated that SWBT must allow CLECs to use a customer's existing loop to achieve this result.[10] The order does not, however, describe the specific processes that SWBT must offer, or that CLECs must follow, to implement this competitively vital capability. It is critical that these processes be made explicit; otherwise CLECs will not have a meaningful opportunity to compete against ILECs in offering bundles of voice and data services to end users, which has become an essential component of local competition.[11]

AT&T's concerns in this regard cover the entire range of OSS support necessary to support line splitting for UNE-P CLECs. CLECs that implement UNE-P for voice services must be assured (1) that they will have simple and easily usable ordering and provisioning processes to add DSL capabilities to their UNE loops; (2) that they will receive nondiscriminatory maintenance and repair support for their voice services after the DSL capability is added to the loop; and (3) that they will obtain sufficient data on the ILECs' performance to assure that they are receiving the required support from ILECs. In addition, ILECs must (4) provide CLECs with necessary billing information in an appropriate and useable format; (5) be prohibited from imposing unreasonable constraints upon shared collocation arrangements between voice and data CLECs; and (6) not charge excessive rates for the work they do in implementing line splitting. Finally, (7) ILECs must not be allowed to tear apart existing service arrangements, or impose a collocation requirement to combine network elements, when there is no technical need to do so. Although AT&T believes that this alternative is far less efficient than having the ILEC provide the splitter, and does not fully address the discrimination and other legal issues AT&T has raised, Attachment 8 sets forth the minimum operational requirements that are necessary if ILECs are permitted to require disassembly of existing UNE-P combinations and require the use of a CLEC-supplied splitter in a CLEC's collocation space when DSL capabilities are added to, or provided with, a UNE loop.

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8 Texas 271 Order ¶ 325 (citation omitted).

9 Id. (citation omitted).

10 Id.

11 SBC Communications, Inc., "Strong Revenue, Wireless and Data Growth Power SBC's Second-Quarter Performance," SBC News Release at 1-2 (July 20, 2000) (touting strong data and DSL service growth in the second quarter, the press release quotes SBC Chairman and CEO Edward Whitacre: "[w]e continue to execute our business plan with passion and purpose, which is to completely transform SBC and its companies into a data-centric business capable of becoming the only communications source our customers will ever need"); see also Fortune, June 12, 2000, "Why the Biggest Baby Bell Is Wild About Broadband" (Chairman Whitacre explained "[b]roadband will be indispensable, and it's going to happen pretty quickly. . . . It will be as basic as telephone service").

As an initial matter, it is important to recognize that there are no practical or technical differences in the work necessary to provide access to a loop for the purposes of supporting line sharing or line splitting, especially when the CLEC must provide the splitter. In the latter case -- just as in line sharing -- a CLEC obtains access to the DSL capability of an existing loop by having the ILEC (1) cross-connect the customer's loop to a collocation that contains a splitter and (2) cross-connect the voice output from the splitter to the switch port on the ILEC circuit switch. In both cases, voice service is provided using the ILEC's loop, switching, signaling, and transport elements. Moreover, in both cases the DSL service is offered by a carrier that has obtained access to the high frequency spectrum ("HFS") of an ILEC loop and provides to itself or obtains from a third party packet switching functionality. In fact, the only significant difference between line sharing and this type of line splitting is the identity of the carrier providing voice service to the end user customer – a competitively important but functionally meaningless distinction.

From a functional standpoint, the Commission has consistently defined an unbundled network element as including "all of [its] features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that element."[12] There can be no dispute that the purpose of providing access to a loop's HFS is identical in both line sharing and line splitting: HFS access is a sine qua non to provide data services to end users. Thus, there is no basis to apply different rules to CLECs' ability to obtain access to HFS, regardless of whether the HFS will be used in a line sharing or line splitting arrangement.

From a legal standpoint, the Commission has also consistently interpreted Section 251(c)(3) to require that competitive carriers' access to unbundled network elements must be nondiscriminatory in two directions. First, all CLECs are entitled to nondiscriminatory access to UNEs measured against the ILEC's (or its affiliate's) access to such elements. In cases where there is no reasonable ILEC analog, CLECs are entitled to access that provides them a "meaningful opportunity to compete."[13] Second, all

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[12] 47 C.F.R. § 51.307(c) (emphasis added); see also Local Competition Order ¶ 382 ("some modification of incumbent LEC facilities" is required by § 251(c)(3)); Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, FCC 99-404, (rel. December 22, 1999)("New York 271 Order") ¶ 271 (an ILEC "must also provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible"); 47 C.F.R. § 51.309(a) (an ILEC may not impose "limitations, restrictions, or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends").

[13] Local Competition Order ¶ 312. The Commission has stated that the "meaningful opportunity to compete" standard is not intended to be a weaker test than the "substantially the same time and manner" standard. New York 271 Order ¶ 45. Rather it serves as a proxy for whether access is being provided in substantially the same time and manner" and, thus, nondiscriminatory. Id.

CLECs are entitled to nondiscriminatory treatment vis-à-vis each other.[14] Furthermore, Section 251(c)(3) requires that access to network elements must be subject to just and reasonable terms and conditions.[15] Given the technical and functional equivalence of line sharing and line splitting -- including when the ILEC does not provide the splitter -- there are two obvious analogs that should be used to establish the baseline requirements for an ILEC's support for line splitting: (1) the support an ILEC provides to itself or its data affiliate when it offers a combined voice/data package to end users[16] and (2) the support the ILEC provides to data CLECs that are engaged in line sharing. The requirements identified in Attachment 8 are firmly rooted in these and related legal principles, as explained in more detail below.

OSS-Related Operational Requirements (Sections I-IV)

Items I.A and I.B of Attachment 8 are necessary to establish an efficient OSS process to support non-facilities-based CLECs' access to the HFS portion of the loop needed to support DSL service.[17] As described in I.A, these requirements seek equal treatment with that offered to a data CLEC or the ILEC's data affiliate. The integration requirement in I.C simply echoes the Commission's consistent concern that electronic preordering and ordering systems must be capable of operating in an integrated manner, so as to avoid unnecessary service delays and problems both for the CLEC and end user customers.[18] Similarly, I.D and the latter portion of I.E. assure that the line splitting CLEC will receive HFS access that is equal in quality to that offered to other DSL providers.[19]

Items I.E through I.H are examples of unreasonable ILEC practices that have occurred in the past and must not be allowed to affect the provision of DSL service. The Commission should make clear that the statutory prohibition on unreasonable practices in both Sections 251(c)(3) and 201(b) forbids these and similar anticompetitive practices. The initial portion of I.E. forbids ILECs from requiring that CLECs request (and pay for)

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14 Local Competition Order ¶ 312; see also id. ¶ 316.

15 Id. ¶ 315.

16 When an ILEC provides voice service and its data affiliate provides data service, the arrangement is defined as "line sharing" under the terms of the Line Sharing Order (at ¶ 17). When an ILEC provides both the voice and data services by itself, the arrangement is more properly defined as line splitting, because the ILEC cannot "share" a loop with itself. Line splitting by CLECs, however, may involve two carriers, one of which purchases the entire loop to provide voice service and the other of which provides data service pursuant to a commercial arrangement with the voice carrier.

17 Local Competition Order ¶¶ 520-525; UNE Remand Order ¶¶ 425-426.

18 Application by BellSouth Corporation, *et al.*, For Provision of In-Region, InterLATA Services in Louisiana, ("BellSouth Second Louisiana Order"), 13 FCC Rcd 20599, 20661-20667 ¶¶ 96-103 (1998); Application by BellSouth Corporation, *et al.*, Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in South Carolina, ("BellSouth South Carolina Order"), 13 FCC Rcd 539, 623-629 ¶¶ 155-166 (1997).

19 47 USC 251(c)(2)(C).

loop qualification information in all cases. There are many situations in which such loop qualification is unnecessary, e.g., when the customer already is receiving data service over its existing loop.[20] Thus, a mandatory loop qualification requirement would be unreasonable. Likewise, I.F precludes ILECs from requiring CLECs to re-submit information that is already in the ILEC's possession, an unreasonable practice that not only increases CLEC costs but creates significant opportunities for errors and provisioning delays.

Item I.G is needed to prevent ILECs from claiming that the loop-collocation-switch port configuration must be treated as a "designed" service, which typically takes longer to implement and may involve engineering and equipment that is generally not required for POTS (i.e., non-designed service). In fact, this exact service configuration is used to support line sharing (in all its forms) and line splitting when the ILEC splits the line for itself. Thus, it clearly requires no special design work. Finally, I.H is necessary to assure that ILECs cannot create unreasonable roadblocks to line splitting when there are two CLECs involved. A UNE-P CLEC must purchase an entire loop in order to provide voice service to the end user. However, in many cases, that CLEC will not have the necessary facilities in place to enable it to provide DSL services to its end users without obtaining certain capabilities from others. For example, the voice CLEC may well be able to reach a commercial arrangement with a data carrier to use the latter's facilities to provide DSL service over the HFS of its customer's loop. In those situations, the data carrier will own the splitter and be performing the work necessary to split the loop in its collocation. Accordingly, it is appropriate that the data carrier place the orders to reconfigure the customer's service arrangements with the ILEC. As long as the voice CLEC (the owner of the loop) has authorized the data CLEC to place such orders on its behalf (for example, by allowing the data CLEC to use its AECN), the ILEC should not be permitted to reject such orders simply because they come from a different source. Indeed, CLECs frequently use multiple AECNs, among other things, to allow for invoicing in a specific manner. Thus, ILECs should readily be able to accommodate such an approach.

Item II addresses the need to assure that ILECs provide nondiscriminatory treatment with respect to the maintenance and repair ("M&R") of voice services on UNE loops that must pass through CLEC splitters. The ILEC provides similar support to its own voice customers when it shares (or splits) a loop with itself or shares the loop with a data carrier. Moreover, M&R activities for the voice service are performed with an orientation to the telephone number of the voice service. UNE-P carriers who are forced into similar arrangements are entitled to the same treatment, without wholesale change to the maintenance procedures and interfaces, provided they arrange for the use of splitters that are compatible with industry standards. Indeed, it would be anticompetitive in the extreme if ILECs could, on the one hand, force CLECs to provide splitters to access HFS and, on the other hand, refuse to provide the CLECs' end users with nondiscriminatory M&R support, simply because the ILEC has refused to insert the splitter into the loop.

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[20] See Line Sharing Order ¶ 87.

The Commission has long recognized that an ILEC's performance of its basic OSS obligations cannot be reviewed in the absence of "clear and precise performance measurements" that tracks and measures its progress.[21] Items III.A-C set out basic requirements needed to perform such measurements. Since ILECs have (presumably) implemented performance plans to track their performance for line sharing with data CLECs, these requirements should be uncontroversial. III.A simply requires the development of an indicator that will enable ILECs to track their performance of HFS-related functions when a UNE-P carrier requests line splitting. This is a standard OSS requirement needed to provide appropriate disaggregation, so that valid performance comparisons can be made.[22] III.B lists the type of performance that must be tracked and measured. With only one exception (retail customer voice service interruption, which is obviously vital and directly comparable to measurements used for loop hot cuts), all of the other measures were recently supported by SBC in an ex parte filing made on July 13, 2000.[23] III.C merely requires the ILEC to provide comparative data that should be available as a result of the ILEC's implementation of its line sharing obligations and are necessary to compare against its performance in support of line splitting. Finally, III.D would place the burden on the ILEC to implement any changes to its OSS to support line splitting (which should be very minor) promptly.

Items IV.A through IV.G set forth UNE-P CLECs' operational billing needs associated with line splitting.[24] These are necessary to assure that (a) CLECs have the information they need to bill for both voice and data services; (b) the data will be delivered in a usable manner without the need for additional systems development; and (c) ILECs will cooperate in assuring that elements used to support data services will be billed to the appropriate CLEC.

Collocation-Related Requirements (Section V)

Items V.A through V.E are necessary to support the provisioning of this form of line splitting when the facilities used to provide the DSL service are operated by a carrier other than the UNE-P CLEC (see discussion of I.H above). In such cases, the two CLECs will be operating under a negotiated commercial arrangement that may involve, for example, shared use of the data CLEC's equipment, collocation space, terminating

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21 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, 20655-20656, ¶ 209 (1997) ("[c]lear and precise performance measurements are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled").

22 See, e.g., BellSouth Second Louisiana Order, ¶ 111; BellSouth South Carolina Order, ¶¶ 101, 102 & n.306.

23 Ex Parte Letter from Austin Schlick, counsel for SBC Communications, Inc. to Lawrence Strickling, Chief, Common Carrier Bureau, Federal Communications Commission, Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation to SBC Communications, Inc., CC Docket No. 98-141, ASD File No. 99-49, dated July 13, 2000.

24 See Local Competition Order ¶¶ 316, 525; UNE Remand Order ¶ 425.

frames and/or inter-frame connecting facilities. As a result, the CLECs need assurance that the ILEC will not obstruct their ability to implement such agreements.

Items V.A through V.C are directly supported by the Commission's Collocation Order, which expressly allows CLECs to share collocations.[25] V.A and V.B preclude the ILEC from impinging on the CLECs' sharing arrangements for physical collocation, as long as no additional ILEC work is needed to create and power the collocation space. V.C similarly requires ILECs to support shared virtual collocation arrangements, provided only that the initially collocating CLEC executes appropriate letters of authorization for the sharing CLEC.

Item V.D assures that ILECs will perform the in-office wiring necessary to support shared collocation arrangements used to provide voice and data services on a single loop. Since this is the same wiring used to support line sharing (or line splitting for the ILEC itself), it is clearly required by the nondiscrimination obligations of Section 251(c)(3). Finally, V.E prevents ILECs from using interlocutory legal challenges relating to collocations to disrupt existing shared collocation arrangements.

Pricing-Related Requirements (Section VI)

Items VI.A and VI.B assume that an ILEC is entitled to recover its costs for performing the cross-connect work necessary to implement line splitting. However, all charges for such work must be subject to the pricing requirements of Section 252(d)(1). Moreover, because the actual work done to support line splitting is identical to that used to support line sharing, the nondiscrimination obligation of Section 251(c)(3) requires that the ILEC meet a heavy burden to support any higher charges for line splitting. Moreover, the ILEC should not be allowed to delay the provisioning of line splitting pending resolution of any pricing disputes.

Other Requirements

Items VII.A and VII.B are rooted in the principles of Rule 51.315(b), which prohibits an ILEC from separating network elements that it currently combines. These requirements also facilitate line splitting that involves two cooperating CLECs. Both involve situations in which there is no need to change any of the facilities arrangements serving the customer, because the CLECs will use those identical facilities to provide service to the end user. In such cases, the ILEC should be required to implement such requests through records-only changes, and those changes should be implemented expeditiously and inexpensively, and without service disruption. Finally, VII.C simply restates the Commission's long-held view that ILECs may not insist that CLECs employ collocation to connect unbundled network elements if no additional functionality will be added in the collocation.[26]

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[25] Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order, 14 FCC 4761, 4784 ¶ 41 (1999).

[26] BellSouth Second Louisiana Order, ¶¶ 168-170.

In sum, on the basis of the material in Attachments 1-7, AT&T requests that the Commission require ILECs to cooperate fully in enabling UNE-P CLECs to provide voice and data services over a single loop as swiftly, seamlessly, reliably, and economically as when an ILEC an its affiliate provide voice and data services, or when an ILEC provides voice services and a data-only CLEC provides advanced services. To best do so, the Commission should require ILECs to supply splitters on a line-at-a-time basis in a commercially reasonable manner. Moreover, to the extent that UNE-P CLECs obtain line splitting through the use of non-ILEC splitters, the Commission should make it clear that ILECs must comply with the operational requirements described in Attachment 8.

An original and two copies of this letter are being submitted pursuant to Section 1.1206 (b) of the Commission's rules. Please insert one copy into the public record of CC Docket Nos. 96-98 and 98-147.

Very truly yours,

Frank S. Simone

Attachments

cc: M. Carey
J. Carr
M. Egler
J. Jennings
J. Nuechterlein
J. Rosenworcel
J. Stanley

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